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Attorneys for Defendant,
GENERAL MOTORS CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT

REBECCA SNOW, Plaintiff, vs. GENERAL MOTORS CORPORATION, Defendant.	Case No.: 08 CV 0193 W LSP ANSWER OF DEFENDANT, GENERAL MOTORS CORPORATION, TO THE COMPLAINT OF PLAINTIFF; DEMAND OF JURY TRIAL

Defendant, GENERAL MOTORS CORPORATION ("Defendant") answers the Complaint on file herein as follows:

1. Answering paragraph 1, GM does not have sufficient knowledge to admit or deny the allegations in this paragraph, and on that basis denies them.

2. Answering paragraph 2, GM makes no response since the paragraph contains no charging allegations and simply states that the word "Plaintiff" shall refer to Plaintiff Rebecca Snow.

3. Answering paragraph 3, GM makes no response since the paragraph contains no charging allegations and simply states that the word "Defendant" shall refer to all defendants named in the Complaint.

4. Answering paragraph 4, GM admits that it manufactured the 2005 Cadillac SRX. With respect to the remaining allegations, GM does not have sufficient knowledge to

admit or deny the allegations in this paragraph, and on that basis denies them.

5. Answering paragraph 5, GM admits that when sold as new, the subject vehicle was delivered with GM's limited warranty. With respect to the remaining allegations, GM does not have sufficient knowledge to admit or deny the allegations in this paragraph, and on that basis denies them.

6. Answering paragraph 6, GM does not have sufficient knowledge to admit or deny the remainder of the allegations in this paragraph, and on that basis denies them.

7. Answering paragraph 7, GM denies the allegations of this paragraph.

8. Answering paragraph 8, GM makes no response since the paragraph contains no charging allegations. However, GM admits that this paragraph contains a legal description of the elements of an implied warranty.

9. Answering paragraph 9, GM denies the allegations of this paragraph mainly because there was no implied warranty made by GM that accompanied the sale of the vehicle to plaintiff.

10. Answering paragraph 10, GM denies the allegations of this paragraph.

11. Answering paragraph 11, GM denies the allegations of this paragraph.

12. Answering paragraph 12, GM repeats and incorporates by reference paragraphs 4 through 11, above.

13. Answering paragraph 13, GM denies the allegations of this paragraph.

14. Answering paragraph 14, GM denies the allegations of this paragraph.

15. Answering paragraph 15, GM denies the allegations of this paragraph mainly because there was no implied warranty made by GM that accompanied the sale of the vehicle to plaintiff.

16. Answering paragraph 16, GM denies the allegations of this paragraph.

17. Answering paragraph 17, GM repeats and incorporates by reference paragraphs 1 through 17, above.

18. Answering paragraph 18, GM admits that plaintiff delivered the vehicle to GM's representatives in this state. GM does not have sufficient knowledge to admit or deny

the remainder of the allegations in this paragraph, and on that basis denies them.

19. Answering paragraph 19, GM denies the allegations of this paragraph.

20. Answering paragraph 20, GM denies the allegations of this paragraph.

21. Answering paragraph 21, GM repeats and incorporates by reference paragraphs 1 through 20, above.

22. Answering paragraph 22, GM denies the allegations in this paragraph. GM has been unable to confirm that the subject vehicle suffers from a defect requiring repair under the terms of its limited warranty.

23. Answering paragraph 23, GM denies the allegations in this paragraph.

24. Answering paragraph 24, GM denies the allegations in this paragraph.

25. Answering paragraph 25, GM denies the allegations in this paragraph.

26. Answering paragraph 26, GM makes no response since the paragraph contains no charging allegations.

27. Answering paragraph 27, GM repeats and incorporates by reference paragraphs 1 through 26, above.

28 thru last numbered paragraph of complaint. Answering paragraphs 28 thru last numbered paragraph of complaint, GM states that Page 7 of the complaint was missing and not served on GM. Therefore, GM does not know the nature of the allegations contained in these paragraphs, and therefore cannot respond to the same. On this basis, GM denies the allegations in these paragraphs.

AFFIRMATIVE DEFENSES TO THE COMPLAINT
AND EACH ALLEGED CAUSE OF ACTION THEREOF

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The Complaint, and each purported cause of action alleged therein, fails to state facts sufficient to constitute a cause of action against this defendant.

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SECOND AFFIRMATIVE DEFENSE

(Failure to Allow a Cure)

Defendant is informed and believes and thereon alleges that plaintiff is barred from obtaining the relief sought in the Complaint on the grounds that plaintiff has failed and refused to allow defendant a reasonable opportunity to cure any alleged breach by defendant.

THIRD AFFIRMATIVE DEFENSE

(Mitigation)

Defendant is informed and believes and thereon alleges that plaintiff's alleged damages, if any, are the result, in whole or in part, of plaintiff's failure to exercise reasonable care to reduce or mitigate damages.

FOURTH AFFIRMATIVE DEFENSE

(Contributory Negligence, Unclean Hands, Assumption of Risk)

Defendant is informed and believes and thereon alleges that plaintiff is barred in whole or in part by her negligence, unclean hands, fault, assumption of risk or otherwise from any and/or all legal or equitable relief against defendant, as requested in the Complaint or otherwise.

FIFTH AFFIRMATIVE DEFENSE

(Statutes of Limitation)

Defendant is informed and believes and thereon alleges that the Complaint, and each cause of action thereof, is barred by application of the statutes of limitation set forth in California Code of Civil Procedure sections 337(1), 337(2), 337(3), 338(1), 338(2), 338(3), 338(4), 338(7), 339(1), 339(3), 340(1), 340(2), 340(3), 342, 343, 344, 348, and Commercial Code 2725 and/or any other statute of limitation applicable to the present action.

SIXTH AFFIRMATIVE DEFENSE

(Apportionment)

Any and all injuries, if any, and damages, if any, sustained or suffered by plaintiff were proximately caused and contributed to by the superseding, intervening acts or omissions of persons other than defendant in that said persons, and each of them, were careless and negligent concerning the matters alleged in the Complaint, and such negligence and carelessness proximately contributed to the loss, injury, damage or detriment alleged in the Complaint with the result that the damages, if any, recoverable by plaintiff herein must be diminished in proportion to the fault attributable to such other persons.

SEVENTH AFFIRMATIVE DEFENSE

(Misuse of Product)

Any and all injuries, if any, and damages, if any, sustained or suffered by plaintiff were directly and proximately caused and contributed to by the misuse of and the unreasonable and improper use of defendant's product. Further, the misuse or failure to use properly defendant's product contributed to the loss, injury, damage or detriment, if any, alleged in the Complaint and the damages, if any, recoverable by plaintiff herein must be diminished in proportion to the amount of fault attributable to such misuse or unreasonable or improper use.

EIGHTH AFFIRMATIVE DEFENSE

(Alteration of Product)

The vehicle was not in a defective or unmerchantable condition at any time when it left possession, custody and control of defendant. Any damage to the subject vehicle was caused and created by changes and alterations made to the vehicle, subsequent to the time of the vehicle's manufacture and/or sale, by persons other than defendant or any of its agents, servants or employees, barring plaintiff's recovery herein.

NINTH AFFIRMATIVE DEFENSE

(Disclaimer)

Defendant is informed and believes and thereon alleges that prior to and at the time of the alleged acts, omissions and conduct of defendant as alleged in the Complaint, defendant expressly disclaimed, negated and excluded all warranties of the type herein alleged by plaintiff, and of any type, express or implied, whatsoever.

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TENTH AFFIRMATIVE DEFENSE

(Lack of Causation)

No act or omission of defendant was the cause in fact or the proximate cause of the injuries and damages, if any, sustained by the plaintiff. Defendant is informed and believes and thereon alleges that any breach of warranty of fitness or merchantability, if any, and any other breach of warranty, if any, and any breach of contractual undertakings of defendant, if any, were neither the cause in fact nor the proximate cause of plaintiff's damages. Rather, any said breaches, if any, were only secondary, inconsequential, indirect and in no way contributed to or caused the alleged damages of plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

(Unauthorized Use of the Product)

Defendant is informed and believes and thereon alleges that any and all damages, if any, sustained or suffered by plaintiff, were proximately caused and contributed to by plaintiff's use of the vehicle which is subject of this lawsuit, for a purpose to which said product was not intended to be so used. Plaintiff knew, or should have known, that the use to which plaintiff put the vehicle was not the use for which the vehicle was manufactured or intended and that such unintended use could cause damage to plaintiff.

TWELFTH AFFIRMATIVE DEFENSE

(Estoppel)

Defendant is informed and believes and thereon alleges that plaintiff is estopped from obtaining the relief sought in the Complaint by virtue of her acts and conduct in connection with the matters alleged in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

Defendant is informed and believes and thereon alleges that plaintiff has waived her rights, if any, to obtain the relief sought in the Complaint.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Comparative Negligence)

Defendant is informed and believes and thereon alleges that plaintiff's damages, if any, were the direct and proximate result of the conduct of plaintiff and/or plaintiff's agents, employees and invitees, in that they negligently, carelessly, recklessly, knowingly and willfully operated, maintained, serviced, directed and otherwise controlled all operations and maintenance of plaintiff's vehicle. Said damages, if any, were directly and proximately caused, in whole or in part and/or was contributed to or aggravated by the conduct of plaintiff and/or plaintiff's agents, employees and invitees, when they so negligently, carelessly, recklessly, knowingly and willfully failed to repair said vehicle, knowing that said vehicle needed repair, but, instead proceeded to operate, maintain, navigate, direct and otherwise make use of the vehicle and/or made improper and inadequate repairs to said vehicle. Defendant is further informed and believes and thereon alleges that the owner of said vehicle knowingly and willfully authorized the hereinabove described operation of the vehicle and knowingly and willfully assumed the known risk that such actions would cause, compound, and/or aggravate the known problems with the vehicle and would proximately cause damage to said vehicle.

FIFTEENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

The risks and dangers in plaintiff's conduct were known to the plaintiff. Plaintiff nevertheless conducted herself in such a manner so as to expose herself and remain exposed to said risks and dangers and by doing so assumed all the risks attendant thereto. At said time, date and place of the incidents described in the Complaint, plaintiff voluntarily assumed the risks of the activities in which she was then and there engaged and under the circumstances and conditions then and there existing, and the resultant injuries, if any, and damages, if any, sustained by plaintiff were proximately caused by plaintiff's own voluntary assumption of risk.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Qualified Third Party Dispute Resolution Process)

Defendant maintains a qualified third party dispute resolution process which substantially complies with section 1793.22 of the California Civil Code. Defendant is informed and believes and thereon alleges plaintiff received timely and appropriate notification, in writing, of the availability of the third party resolution process. Accordingly, since plaintiff did not avail herself of the third party dispute resolution process prior to filing this litigation, section 1794(e)(2) of the California Civil Code affirmatively bars plaintiff from recovering damages for (I) treble damages (as provided under California Civil Code section 1794(e)) and (ii) plaintiff cannot avail herself of the rebuttable presumption pursuant to California Civil Code section 1793.22(e)(1).

SEVENTEENTH AFFIRMATIVE DEFENSE

(Good Faith Belief in Legality of Actions)

Defendant alleges that at all times relevant to this action, defendant acted in good faith and believes its actions to have been legal.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Honest Belief)

Defendant alleges that at all times relevant to this action, defendant honestly believed that a statutory obligation to repurchase or replace plaintiff's vehicle did not exist.

NINETEENTH AFFIRMATIVE DEFENSE

(Offset for Use)

Defendant alleges that it intends to take advantage of the reduction authorized by Civil Code section 1793.2(d)(2)(C) if defendant is found to be in violation of the Song-Beverly Consumer Warranty Act.

TWENTIETH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available.

Defendant reserves herein the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

WHEREFORE, defendant prays:

1. That plaintiff takes nothing by the Complaint;
2. For cost of suit; and
3. For such other and further relief as the Court deems just and proper.

DATED: February 18, 2008

RUBEN & SJOLANDER

BY ____________________
DAVID N. RUBEN
Attorneys for Defendant,
GENERAL MOTORS CORPORATION

DEMAND FOR JURY TRIAL

Defendant hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: February 18, 2008

RUBEN & SJOLANDER

BY ____________________
DAVID N. RUBEN
Attorneys for Defendant,
GENERAL MOTORS CORPORATION

PROOF OF SERVICE

I am employed in the County of Los Angeles and my business address is 1875 Century Park East, Suite 1050, Los Angeles, California 90067. I am over the age of 18 years and I am not a party to this action. I am readily familiar with the practices of RUBEN & SJOLANDER for the collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On February 22, 2008, I served the foregoing document(s), bearing the title(s) **ANSWER OF DEFENDANT, GENERAL MOTORS CORPORATION, TO THE COMPLAINT OF PLAINTIFF; DEMAND FOR JURY TRIAL** on the interested parties in the action as follows:

[X] by placing [] the **original** [X] a **true copy** thereof enclosed in a sealed envelope addressed as follows:

Michael E. Lindsey, Esq.
LAW OFFICES OF MICHAEL E. LINDSEY
4455 Morena Boulevard, Suite 207
San Diego, California 92117
Ph: (858) 270-7000; Fx: (858) 270-7710

Martin W. Anderson, Esq.
ANDERSON LAW FIRM
2070 North Tustin Avenue
Santa Ana, California 92705
Ph: (714) 516-2700; Fx: (714) 532-4700
martin@andersonlaw.net

[X] (**BY EFILE SERVICE**) The above document was served on the interested party named above by electronic means via Efile.

[] (**BY FACSIMILE**) The document stated herein was transmitted by facsimile transmission and the transmission was reported as complete and without error. A transmission report was properly issued by the transmitting facsimile machine and a copy of said transmission report is attached to the original proof of service indicating the time of transmission.

[] (**BY FEDERAL EXPRESS - NEXT DAY DELIVERY**) I caused to be delivered such envelope by hand to the office of the addressee.

[] (**State**) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[X] (**Federal**) I declare under penalty of perjury that I am employed by a member of the Bar of this Court, at whose direction this service is made.

Executed on February 22, 2008, at Los Angeles, California.

Tricia Flansburg

TRICIA FLANSBURG